IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07/03/2003

CORAM

THE HONOURABLE MR. JUSTICE A.K. RAJAN

S.A.No.294 of 2003
and
C.M.P.2761 of 2003

R.Jayapaul .. Appellant

-Vs-

Pappayee Ammal .. Respondent

Appeal filed against the judgment dated 13.9.2002 in A.S.57 of 1996 by the Subordinate Judge, Periakulam, as stated therein.

!For Appellant : Mr. S.Arunachalam

^For Respondent : ---

:JUDGMENT

Suit has been filed for declaration, for recovery of possession and for mesne profits.
2. The suit property was Government property; it was originally allotted long back in the name of one Chinnamuthiammal. She was the first wife of one Ramar. Chinnamuthiammal had no issues; hence she was divorced according to their custom by Ramar. Subsequently, Ramar married one Chitra as his second wife. Through Chitra, Ramar had a son, who is the defendant. Chinnamuthiammal during her life-time executed a gift deed in favour of Pappayee Ammal, the plaintiff, who is the sister's daughter of Chinnamuthiammal. While so, Chinnamuthiammal died and the last rites were performed by the sons of the defendant. Thereafter, the defendant occupied the property. Therefore, the present suit has been filed, as stated above.

2. The case of the defendant is that the property though allotted in the name of Chinnamuthiammal, it is really the property of Ramar, that is, the husband of Chinnamuthiammal and out of his income, a house was constructed in the said property and therefore, the entire property is that of Ramar and not that of Chinnamuthiammal and therefore, merely because, the gift deed has been executed, no property has been conveyed to Pappayee Ammal.

3. The trial Court rejected the contention of the defendant and

decreed the suit, as prayed for. Against that, an appeal was filed and the same was also dismissed, against which, the present appeal has been filed.

4. Learned counsel for the appellant submitted that in this case, the gift deed has not been proved by examining the attesting witnesses. The attesting witnesses had not stated that the executant signed that document and therefore, the settlement deed has not been properly proved. As per Section 68 of the Evidence Act, this document is required to be proved by examining atleast one attesting witness. Since it has not been legally proved, the judgment and decree of both the trial Court and the first Appellate Court are liable to be set aside. This argument of the learned counsel for the appellant is not acceptable.

5. Under proviso to Section 68 of the Evidence Act, only when the execution of the gift deed is specifically denied, the document has to be proved by examining the attesting witnesses. But such a denial can be made only by a person who would have succeeded to the property, but for the gift deed, such a denial cannot be made by any person, unless he had a right to succeed or had any other right in the property. In the absence of such circumstances, the provisions of Section 6 8 of the Evidence Act is not attracted.

6. Admittedly, the property was originally allotted by the Government in the name of Chinnamuthiammal and therefore, Chinnamuthiammal is the absolute owner of the property. Even assuming that Ramar had contributed for construction of the house in the suit property, it has become the property of Chinnamuthiammal and not that of the defendant, son of the said Ramar.

7. Chinnamuthiammal has executed a gift deed in favour of her sister's daughter. But the defendant denies execution of gift deed by Chinnamuthiammal. Even assuming for the sake of argument that there was no such gift deed, yet the defendant has no right to succeed to the property of Chinnamuthiammal. Since Ramar divorced her, the relationship between Ramar and Chinnamuthiammal severs. The defendant being the son through the second wife of Ramar cannot claim the property as against the plaintiff who is the daughter of Chinnamuthiammal's sister. Even assuming for the sake of argument that Ramar contributed money for construction of the property in the plot, after his death, no one has the right to sue for a declaration that it is the property of Ramar, when the said Ramar did not make such a claim during his life time. Merely because the defendant's son performed the last rites to Chinnamuthiammal, the defendant or his sons do not get any right to succeed to the property of Chinnamuthiammal. Performing last rites does not confer any right of succession over the property of the deceased.

8. Both the Courts below have rightly concluded that the plaintiff is entitled to the suit property. There is no substantial question of law in this appeal.

9. Therefore, the Second Appeal is dismissed. Consequently, C.M.P.2 761 of 2003 is closed.

Index: Yes
Web Site: Yes

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